

**CHRISTOPHER B. JULIAN and
RENEE G. JULIAN,**

Civil Action No. 4:13-CV-00054

**THOMAS J. VILSACK,
SECRETARY OF AGRICULTURE
U.S. DEPARTMENT OF AGRICULTURE,**

MOTION TO CANCEL JURY TRIAL

The Defendant, by counsel, Kartic Padmanabhan, Assistant United States Attorney, moves the Court for the entry of an Order cancelling the jury trial currently set for September 4-5, 2014. *See* Dkt. No. 33. In support thereof, the Defendant states as follows:

In addition, where the court reviews the decision of an administrative agency, the summary judgment motion “stands in a somewhat unusual light, in that the administrative record provides the complete factual predicate for the court's review.” *See Fener v. Hunt*, 971 F. Supp. 1025, 1030 (W.D. Va. 1997) (quoting *Krichbaum v. Kelley*, 844 F. Supp. 1107, 1110 (W.D. Va. 1994)). *See also Mahon v. United States Dep't of Agric.*, 485 F.3d 1247, 1253 (11th Cir. 2007) (Summary judgment is particularly appropriate in cases in which a district court is asked to review a decision rendered by a federal administrative agency). Because the factual record is closed, the “plaintiff's burden on summary judgment is not materially different from his ultimate burden on the merits.” *Fener*, 971 F. Supp. at 1030. Therefore, in the Defendant’s view, the hearing on Defendant’s Motion for Summary Judgment will resolve the remaining issue in this case and will obviate the need for any further development of the facts by way of a trial.

Undersigned counsel attempted to contact Plaintiffs regarding this motion but was unable to reach them.

Respectfully submitted,

TIMOTHY J. HEAPHY
United States Attorney

Date: July 28, 2014

/s/ Kartic Padmanabhan
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CERTIFICATE OF SERVICE

I certify that on July 28, 2014, I caused the foregoing Motion to Cancel Jury Trial to be electronically filed with the Court using the CM/EFC system, and mailed a true copy thru the United States Postal Service to the following non-CM/ECF participants:

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/s/ Kartic Padmanabhan
Kartic Padmanabhan
Assistant United States Attorney